

CITY OF SAN JOSÉ, CALIFORNIA
Department of Planning, Building and Code Enforcement
801 North First Street, Room 400
San José, California 95110-1795

STAFF REPORT

Hearing Date/Agenda Number
11-13-02 /Item #: 3a.

File Number
RCP02-017

Application Type
Conditional Use Permit

Council District
3

Planning Area
Downtown Core

Assessor's Parcel Number(s)
259-92-040

PROJECT DESCRIPTION

Completed by: Amie Glaser

Location: 18 Almaden Avenue

Gross Acreage: .09

Net Acreage: n/a

Net Density: n/a

Existing Zoning: CG

Existing Use: Public eating establishment (restaurant)

Proposed Zoning: n/a

Proposed Use: Public eating establishment, with live entertainment, including after-midnight use until 3:00 AM

GENERAL PLAN

Completed by: AG

Land Use/Transportation Diagram Designation
Core Area

Project Conformance: ☒ Yes ☐ No
☐ See Analysis and Recommendations

SURROUNDING LAND USES AND ZONING

Completed by: AG

North: Restaurant

Commercial General

East: Parking Lot

Commercial General

South: Auto Body Shop

Commercial General

West: Parking Structure

Commercial General

ENVIRONMENTAL STATUS

Completed by: AG

☒ Environmental Impact Report found complete 4/27/99
☐ Negative Declaration circulated on

☐ Exempt
☐ Environmental Review Incomplete

FILE HISTORY

Completed by: AG

Annexation Title: Original City

Date: n/a

PLANNING DEPARTMENT RECOMMENDATIONS AND ACTION

☐ Approval
☒ Approval with Conditions

Date:

Approved by: _____

Approved by: _____
☒ Action
☐ Recommendation

APPLICANT/OWNER/DEVELOPER

Sebastian & Jaime Sanchez
18 South Almaden
San Jose, CA 95113

PUBLIC AGENCY COMMENTS RECEIVED

Completed by: AG**Department of Public Works**

None received.

Other Departments and Agencies

None received.

GENERAL CORRESPONDENCE

None received.

ANALYSIS AND RECOMMENDATIONS

BACKGROUND

The applicant requests this Conditional Use Permit (CUP) to continue operating a public eating establishment (restaurant) doing business as Chacho's. The CUP will also allow the addition of live entertainment between 10:00 PM and 2:00 AM. The project site is located at 18 Almaden Avenue and is in the Commercial General (CG) Zoning District. A CUP is required in the CG Zoning District for entertainment establishments playing live music beyond 10:00 PM and for after midnight operations. Restaurants are a permitted use within the CG district and do not require a Conditional Use Permit; therefore, the CUP is needed solely for the after-midnight operation of the facility.

Chacho's is currently operating under an existing Conditional Use Permit (CUP), File Number RCP96-02-03. That CUP allows Chacho's to stay open till 3:00 AM daily, with alcohol sales ceasing at 1:30 AM. Chacho's is not allowed live entertainment under their current CUP, beyond that considered incidental to restaurant operation. However, Chacho's is requesting to change their CUP to allow live entertainment, including live music. All live music and/or entertainment will cease by 2:00 AM.

The 0.09-acre project site is developed with an existing commercial building. The proposal will allow the existing structure to be used for a restaurant with live entertainment. The hours of operation of the facility will be 10:00 AM to 3:00 AM, daily. The project site is situated amid a variety of commercial uses and abuts another restaurant, (Dac Phuc) to the north. A parking lot is located to the west and east and an auto body shop is located to the south of the project site. Approval of the CUP will allow the facility to operate as a restaurant and entertainment establishment until 3:00 AM, daily, with entertainment ending at 2:00 AM.

ENVIRONMENTAL REVIEW

Environmental clearance has been granted for this project through the Final Supplemental Environmental Impact Report (EIR) entitled, *Downtown Strategy Plan*, certified by City Council Resolution No. 68839 on April 27, 1999 in that the City has determined that the project does not involve any new significant environmental impacts beyond those previously analyzed in the EIR.

SAN JOSE GENERAL PLAN CONFORMANCE

The project site is designated Core Area on the *San Jose 2020 Land Use/Transportation Diagram*. This designation allows a range of “office, retail, service, residential, and entertainment uses in the Downtown Core Area.” More specifically, late night, entertainment-oriented uses, such as restaurants and entertainment establishments, are encouraged to locate in the Core Area rather than in other less appropriate areas of the City so long as they do not impact neighboring uses. Given the project’s location, the proposed use is consistent with the General Plan and the Core Area designation.

ANALYSIS

The main issues in regarding this proposal are the following:

Compliance with City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars

The proposed uses will be limited in operation to no later than 3:00 AM, with alcohol sales terminating at 1:30 AM and live entertainment and music terminating at 2:00 AM. These provisions are consistent with the City Council 24-hour Use Policy and Guidelines for Evaluation of Nightclubs and Bars, which apply to after-midnight uses within the Downtown. Restaurants, cafés and other commercial uses are encouraged where they can operate without detriment to nearby residential uses or the general welfare of the surrounding area. The area has been specifically identified as an entertainment zone by the *Strategy 2000* plan, which guides development for the Downtown Core. The Police Department has stated that the continued use at the existing location, with the addition of live entertainment will not result in additional police problems.

Land Use Compatibility

Commercial land uses and structures surround the project site: retail uses to the south and west, a parking lot to the east, and a restaurant to the north. There are no residential uses within 500 feet of the project site. Based on the composition of surrounding uses, the subject property is well suited for after-midnight restaurant and entertainment use. Moreover, the proposed use has been reviewed by the Police Department and acceptable operational practices, contained in the conditions of approval, will minimize any impacts this project could potentially have.

Compliance with Zoning Code Parking Requirements

The project site is located in the Downtown Parking Management Zone (SJMC 20.90.500), which establishes the parking requirements for the downtown (SJMC 20.90.500). Based on the proposed eating and entertainment establishment uses, onsite parking is not required. Even though the project is not required to provide any off-street parking, adequate parking will be provided by public parking lots and on street parking in the vicinity.

CONCLUSION

Based on the above analysis, staff concludes that the proposed project is in conformance with the requirements of the Zoning Ordinance, parking requirements, and the City Council 24-hour Use and Nightclub Policies, and that the proposed use is compatible with its surroundings.

RECOMMENDATION

Agency staff recommends that the Planning Commission approve the requested Conditional Use Permit and include the following findings and conditions in its Resolution.

The Planning Commission finds that the following are the relevant facts regarding the proposed project:

1. This is a Conditional Use Permit to conditionally allow an existing public eating establishment to maintain after-midnight operations with the addition of live entertainment.
2. Hours of operation for the establishment shall be 10:00 AM to 3:00 AM, daily, alcohol service ceasing at 1:30 AM and entertainment ceasing at 2:00 AM.
3. The project site is located in the Downtown CG - Commercial General Zoning District. A CUP is required for after-midnight operations.
4. The San Jose 2020 General Plan and the Downtown Strategy Plan provide that restaurant/bars/breweries may be appropriately located in areas designated Core Area, provided that such uses do not adversely impact existing or planned uses or conflict with other San Jose General Plan or the Downtown Strategy Plan Goals and Policies.
5. The City's 24-hour Use Policy and Municipal Code requires that all commercial uses operating between the hours of 12:00 midnight and 6:00 AM obtain a Conditional Use Permit.
6. The environmental impacts of this project were addressed by Final SEIR entitled, "Downtown Strategy Plan" and adopted by City Council Resolution No. 68839 on April 27, 1999.
7. Commercial uses surround the project site in all directions.
8. There are no residential uses within 500 feet of the project site.
9. The project is located within the Downtown Parking Management Zone. Based on the parking requirements for the Downtown (SJMC 20.90.510), no parking is required for the proposed bar use.

This Planning Commission concludes and finds, based upon an analysis of the above facts, that:

1. Upon issuance of this Conditional Use Permit, the proposed use will comply with the Zoning Ordinance in that the operation of a commercial establishment with live entertainment and after midnight requires the approval of a Conditional Use Permit.
2. The proposed project conforms to the Core Area land use designation in the 2020 General Plan. This project is also consistent with the Downtown Strategy Plan and 24-hour Use Policy for the operation of a bar after midnight.
3. This property is well suited for the subject activities due to its location in the Core Area and its distance from existing or planned residential uses and will therefore, not negatively impact the general welfare of the surrounding area.

4. The project is in conformance with the California Environmental Quality Act in that it does not include additional impacts to those addressed in the Downtown EIR.
5. The proposed use complies with the parking requirements as stated in the Downtown Off-Street Parking Requirements, Section 20.90.500.
6. The proposed use is consistent with adjacent commercial use and will not impact residential uses, which are not in the immediate vicinity of the project.

Finally, based upon the above-stated findings and subject to the conditions set forth below, the Planning Commission finds and concludes that:

1. The proposed use at the location will not:
 - a. Adversely affect the peace, health, safety, morals or welfare of persons residing or working in the surrounding area because the proposed restaurant/entertainment facility use are consistent with the commercial uses of the surrounding area; or
 - b. Impair the utility or value of property of other persons located in the vicinity of the site because the proposed restaurant/entertainment uses will contribute to the vitality and desirability of Downtown and will not alter or diminish the value of adjacent restaurants or businesses, raise new safety concerns, or create visual impacts; or
 - c. Be detrimental to public health, safety or general welfare because the potential environmental impacts of the project were addressed by the final supplemental environmental impact report entitled, *Downtown Strategy Plan EIR* (Resolution No. 68839); and
2. The proposed site is adequate in size and shape to accommodate the development features necessary to integrate said use with the uses in the surrounding area because the project site already includes the improvements needed for the proposed restaurant/entertainment facility use which is compatible with the uses in the surrounding area; and
3. The proposed site is adequately served:
 - a. By highways or streets of sufficient width and improved as necessary to carry the kind and quantity of traffic such use would generate in that the proposed project will not need to provide offsite improvements to the existing roadway network or transit facilities; and
 - b. By other public or private service facilities as are required in that the scale of the project will not necessitate expansion of service facilities.

In accordance with the findings set forth above, a Conditional Use Permit to use the subject property for said purpose specified above and subject to each and all of the conditions hereinafter set forth is hereby granted. This Planning Commission expressly declares that it would not have granted this permit except upon and subject to each and all of said conditions. Each and all of which conditions shall run with the land and be binding upon the owner and all subsequent owners of the subject property and all persons who use the subject property for the use conditionally permitted hereby.

CONDITIONS PRECEDENT

This Conditional Use Permit shall have no force or effect and the subject property shall not be used for the hereby permitted uses unless and until all things required by the below enumerated precedent conditions all have been performed or caused to be performed and this Resolution has been recorded with the County Recorder.

1. Acceptance and Payment of Recording Fees. Within sixty (60) days from the date of this Resolution, the property owner(s) shall accept this permit by signing the form provided hereto, and paying the fee for its recordation by the Recorder of the County of Santa Clara.

CONCURRENT CONDITIONS

The subject property shall be maintained and utilized in compliance with the below enumerated conditions throughout the life of the permit:

1. Water Pollution Control Plant Notice. This Conditional Use Permit is subject to the operation of Part 2.75 of the Chapter 15.12 of Title 15 of the San Jose Municipal Code. The applicant for or recipient of such land use approval hereby acknowledges receipt of notice that the issuance of a building permit to implement such land development approval may be suspended, conditioned or denied where the City Manager has determined that such action is necessary to remain within the aggregate operational capacity of the sanitary sewer system available to the City of San Jose or to meet the discharge standards of the sanitary sewer system imposed on the California Regional Water Quality Control Board for the San Francisco Bay Region.
2. Nuisance. This use shall be operated in a manner which does not create a public or private nuisance. Any such nuisance must be abated immediately upon notice by the City or the Redevelopment Agency.
3. Hours of Operation. The bar and live musical entertainment shall be limited to 10:00 AM to 3:00 AM daily, with alcohol sales terminating at 1:30 AM. Live music and entertainment shall cease at 2:00 AM.
4. Security. A minimum of two security officers shall be on duty for every 100 patrons using the facility during its hours of operation.
5. Noise and Acoustics.
 - a. During the hours of operation, amplified sound shall be carefully regulated to ensure compatibility with adjacent uses.
 - b. Noise emission shall comply with the policies identified in the "Noise Element" of the *San Jose 2020 General Plan*.
6. Trash, Refuse, Garbage and Litter.
 - a. Cleaning shall including keeping all publicly used areas free of litter, trash, cigarette butts and garbage and shall include daily damp washing of all exterior walls and sidewalks along the project's frontage.

- b. Mechanical equipment used for outside maintenance, including blowers and street- sweepers shall not be used between 10:00 PM and 6:00 AM, seven days a week.
 - c. All trash areas, equipment, and containers shall be effectively screened from view and maintained in an orderly state at all times.
 - d. The facility operator shall provide adequate ashtrays along the business frontage to accommodate patrons who wish to smoke outdoors. Patrons smoking outdoors shall not impede pedestrian traffic along the project frontage.
7. Patron Parking. The project operator shall identify and publicize to its patrons the location and availability of parking facilities within the vicinity of the project site.
8. ABC License. The project operator shall obtain the appropriate permit, based on the use of the facility from the State of California Department of Alcoholic Beverages Control (ABC) and shall maintain that license according to the use operated.
9. Entertainment Permit. The project operator shall obtain and maintain the appropriate Entertainment Permit issued by the City of San Jose Police Department.
10. Fire Conditions: The applicant shall meet all conditions and regulations required by the Fire Department.

CONDITIONS SUBSEQUENT

1. Building Permit. Regarding construction or physical alteration of any buildings or structures, said Permit shall expire and be of no further force or effect if the construction of buildings or structures pursuant to a valid Building Permit has not commenced within two (2) years from the date of the adoption of this Resolution. No further Building Permit shall be issued after expiration of the Conditional Use Permit pursuant to this condition or to a time limit condition. However, nothing herein shall be deemed to prevent the renewal or resistance of any Building Permit, which expires by its own terms prior to the expiration of this Permit.
2. Compliance Review. A Compliance Hearing may be required at the discretion the Planning Commission at any time during the period of time this permit is in effect.
3. Revocation, Suspension, Modification. This Special Use Permit may be revoked, suspended or modified by the Executive Director of the Redevelopment Agency, or the Planning Commission on appeal, at any time, regardless of who is the owner of the subject property or who has the right to possession thereof or who is using the same at such time, whenever, after a noticed hearing in accordance with Part 2, Chapter 20.100.350 of the *San Jose Municipal Code* it finds:
- a. A violation of any condition of the Special Use Permit was not abated, corrected or rectified within the time specified on a notice of violation; or
 - b. A violation of any City ordinance or State law was not abated, corrected or rectified within the time specified on a Notice of Noncompliance; or
 - c. A use as presently conducted creates a nuisance.